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October 27, 2005

State of Montana

Alcohol Sales and Underage Drinking Laws in Montana

Montana Department of Transportation



The Facts About Alcohol Sales

and

The Law in Montana

Summary of key laws regarding alcohol:

- ♦ It is unlawful for any licensee, and licensee's employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to anyone under 21 years of age.
(16-3-301(3)(a)) MCA.
- ♦ If a person shows a server or licensee a false identification and depicts himself/herself as 21 year old, and that a responsible person would have believed to be a legal identification, then the server or licensee would be protected. (16-3-301(6)) MCA. (The server or licensee should consider the tips outlined on how to Reduce Liability for Licensees within this document.)
- ♦ It is a crime for anyone under the age of 21 who knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt-to-purchase-an-intoxicating-substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time the offense was committed and may be ordered to perform community service.
- ♦ It is against the law for any person (including parents) to invite a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives or purchases an alcoholic beverage for the person; permits the person in a public place where an alcoholic beverage is sold



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Montana Department of Transportation:
Montana Highway Traffic Safety Office

Montana Department of Revenue

Montana Tavern Association

Montana Department of Public Health and Human Services

Montana Board of Crime Control

Montana Department of Justice:
Motor Vehicle Division



MCA Code References:

- 16-3-301 MCA. Unlawful purchases, transfers, sales, or deliveries – presumption of legal age.
- 16-6-304 MCA. Providing alcoholic beverage to intoxicated person prohibited.
- 16-6-305 MCA . Age limit for sale or provision of alcoholic beverages – liability of provider.
- 45-5-622(2)(a)(i) MCA . Endangering the welfare of children.
- 45-5-623 MCA. Unlawful transaction with children.
- 45-5-624 MCA. Unlawful attempt to purchase or possession of an intoxicating substance – interference with sentence or court order.
- 16-11-301-312 MCA. Youth Access to Tobacco Products Control Act – for more information on underage tobacco sales, contact the Department of Public Health & Human Services and the Department of Revenue.
- 61-8-460 MCA. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.
- 27-1-710 MCA. Civil liabilities for injuries involving alcohol consumption.

to treat, give, or purchase alcoholic beverages for him; or holds out the person to be 21 years of age or older to the owner of the establishment or his or her employee or employees. (16-6-305(2)) MCA. (45-5-622(2)(a)(i)) MCA. Endangering the Welfare of Children (45-5-623) Unlawful Transactions with Children MCA. ***Penalties for persons convicted of providing alcoholic beverages to a person under 21 years of age:***

1st Offense	Fined \$0-\$500 and/or	Jailed 0-6 mos.
2nd Offense	Fined \$0-\$1,000 and/or	Jailed 0-6 mos.

- ♦ An act restricting youth access to alcohol; and providing for registration of sales of kegs of beer. A licensee may not sell a keg of beer unless an identification tag is attached to the keg by the licensee. (16-3-321) MCA.
- ♦ It is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to any intoxicated person or any person actually, apparently, or obviously intoxicated. (16-3-301(3)(b)) MCA. Unlawful Purchases, Transfers, Sales or Deliveries – Presumption of Legal Age
- ♦ It is further mandatory that all licensees display in a prominent place in their premises an age placard as issued by the Department of Revenue stating fully the consequences of violations of the provisions of this code by persons under 21 years of age. (16-3-301(5)) MCA. Unlawful Purchases, Transfers, Sales or Deliveries – Presumption of Legal Age

- ♦ A person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway. (61-8-460) MCA.

Tips for Reducing Liability for Licensees:

There are specific actions that every licensee can take to reduce liability. Staff members also have certain responsibilities that can reduce liability for themselves and the alcohol outlet.

All licensees, their agents, and employees must conduct the licensed premises in compliance with the rules of other state and local agencies and abide by all. (ARM 42.13.101)

3. Reactions

- ♦ Lighting more than one cigarette at a time
- ♦ Unable to light cigarette
- ♦ Glassy eyes, lack of eye focus
- ♦ Loss of train of thought
- ♦ Slurred speech

4. Coordination

- ♦ Unable to pick up change
- ♦ Spilling drink, can't find mouth with glass
- ♦ Unable to sit straight on chair or barstool, swaying, drowsy
- ♦ Stumbling, has trouble moving around objects in path, bumps into things
- ♦ Falling

Signs of visible intoxication:

Drinking too fast	Drinking alone	Boisterous
Ordering doubles	Spilling drinks	Crying or moody
Crude behavior	Aggressive	Falling asleep
Sexual advances	Stumbling	Depressed
Bumping into things	Drowsiness	Obnoxious or mean

***Behavioral cues appear progressively
in four basic areas:***

1. Inhibitions

- ◆ Becoming overly friendly
- ◆ Bravado
- ◆ Becoming loud
- ◆ Changing from loud to quiet or vice versa
- ◆ Drinking alone
- ◆ Annoying other customers

2. Judgment

- ◆ Complaining about strength of drink
- ◆ Changing consumption rate
- ◆ Ordering doubles
- ◆ Becoming argumentative
- ◆ Using foul language
- ◆ Careless with money
- ◆ Buying rounds for strangers or buying for house
- ◆ Making irrational statements
- ◆ Becoming belligerent

Liability for Licensees:

The license holder carries the primary legal responsibility for compliance with alcohol laws. However, individual staff members can also be charged and convicted when they violate these laws.

- ◆ When an underage person is served an alcoholic beverage, **both the server and the licensee/owner can be held responsible.**
- ◆ The **server** is subject to a criminal action within the county it took place.
- ◆ The **licensee/owner** is subject to an administrative action at the state level. Currently the violation for Sale to a Minor is:
 - 1st offense—\$250
 - 2nd offense—(within a 3 year period) - \$1000
 - 3rd offense—(within a 3 year period) - \$1500 and/or a 20 day suspension, and
 - 4th offense—(within a 3 year period) - revocation of license.
- ◆ If an accident occurs involving a person or an underage person because of negligence of the server or licensee/owner, the owner is responsible for the actions of the server, but both owner and server can be sued.
- ◆ Liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage. (27-1-710) MCA.



Here are a few things to remember:

- ♦ The body gets rid of about one drink per hour.
(12 oz. Beer = 5 oz. Glass of wine = 1 1/2 oz. Shot of 80-proof spirits)
- ♦ The number of drinks in the body at any time equals the number of drinks consumed minus the number of hours since drinking started.
- ♦ The average person will become intoxicated with four drinks in his system. A lightweight person (e.g., under 140 pounds) can become intoxicated with three drinks in his/her system.

Owners and servers can reduce the problem of excessive drinking:

- ♦ Do not have ‘happy hours’ that involve double-strength drinks or two-for-one prices.
- ♦ Eliminate specials that promote excessive drinking within short periods of time.

The courts are required to report the name of any person who is convicted under 45-5-624 MCA to the Department of Public Health and Human Services (DPHHS) . DPHHS shall maintain a list of those persons who have been convicted. This list must be available upon request to peace officers and to any court.

Violation	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
Sale to a minor	\$250	\$1000	\$1500/20-day suspension	Revocation
Sale to intoxicated persons	\$250	\$1000	\$1500/20-day suspension	Revocation
Open after hours	\$150	\$600	\$1000/12-day suspension	Revocation
Sale after hours	\$150	\$600	\$1000/12-day suspension	Revocation
Re-pouring	\$250	\$1000	\$1500/20-day suspension	Revocation
Denial of Right to Inspect	\$150	\$600	\$1000/12-day suspension	Revocation
No approval to alter	\$300	\$600	\$1000/12-day suspension	Revocation
No management agreement	\$150	\$600	\$1000/12-day suspension	Revocation
Improper use of catering endorsement	\$150	\$600	\$1000/12-day suspension	Revocation
Accept more than 7 days credit	\$250	\$1000	\$1500/20-day suspension	Revocation
Extend more than 7 days	\$250	\$1000	\$1500/20-day suspension	Revocation
Undisclosed ownership interest	Fine/Suspension or Revocation	Fine/Suspension or Revocation	Fine/Suspension or Revocation	Fine/Suspension or Revocation
90-Day nonuse without approval	Lapse	Lapse	Lapse	Lapse

For more information/clarification regarding the above violations, contact the Department of Revenue.

Behind The Bar

...A Different Point of View

“The number one concern of bar owners and servers is the possibility of a customer leaving their establishment and hurting himself or herself or someone else because they have had too much to drink.”



Effective ways to deal with excessive drinkers:

- ♦ Suggest alternative beverages such as soft drinks, coffee, tea, and non-alcohol beer.
- ♦ Offer food-table snacks, hors d'oeuvres, soup or salad, sandwich, full meal.
- ♦ Visit their table less frequently.
- ♦ Wait until everyone at the table is finished and clear glasses before taking orders.
- ♦ Encourage participation in available activities – dancing, song contests, video games, etc.
- ♦ Suggest they slow down or taper off.
- ♦ Sometimes you just have to tell the person they have had enough and you are not going to serve them anymore.
- ♦ Drink Counting – One way to keep patrons from becoming intoxicated is to keep track of their drinks.

Develop a written policy and procedures for alcohol sales and service that:

- ♦ Identifies expectations regarding alcohol sales for all staff.
- ♦ Require all staff to read the written policy and procedures.
- ♦ Outline steps for preventing alcohol sales to underage youth.
- ♦ Describes consequences for violating the policy.
- ♦ State how management will support staff in alcohol sales.
- ♦ Encourage programs of alternative ways for patrons to get home safely:
 - Designated driver,
 - Taxi cabs, or
 - Safe ride programs

Actively monitor staff compliance with the policy by:

- ♦ Observing staff on a regular basis
- ♦ Correcting behavior when necessary

Reward staff for compliance with the policy by:

- ♦ Offering encouragement for checking ID.
- ♦ Creating an incentive program with meaningful staff rewards.



18 Years of Age or Older, But Under 21

1 ST OFFENSE	2 ND OFFENSE	3 RD OR SUBSEQUENT OFFENSE
<p>Fine not less than \$100 or more than \$300</p> <p>Shall be ordered to perform 20 hours of community service</p> <p>Shall complete and pay all costs for participation in a community-based substance abuse information course approved by DPHHS, or court, or provided by the Department of Corrections, or a licensed hospital that provides chemical dependency services.</p>	<p>Fine not less than \$200 or more than \$600</p> <p>Shall be ordered to perform 40 hours of community service</p> <p>Shall complete and pay all costs for participation in a community-based substance abuse information course approved by DPHHS, or court, or provided by the Dept. of Corrections, or a licensed hospital that provides chemical dependency services. May include alcohol and/or drug treatment programs.</p>	<p>Fine not less than \$300 or more than \$900</p> <p>Shall be ordered to perform 60 hours of community service</p> <p>Shall complete and pay all costs for participation in a community-based substance abuse information course approved by DPHHS, or court, or provided by the Department of Corrections, or a licensed hospital that provides chemical dependency services. May include alcohol and/or drug treatment programs.</p> <p>(Discretion of court) Shall be imprisoned in county jail for term not to exceed 6 months</p>

A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time the offense was committed and may be ordered to perform community service.

Train staff to:

- ◆ Always ask and check ID thoroughly.
- ◆ Recognize fake ID.
- ◆ Make a copy of identification.
- ◆ Know state alcohol laws.
- ◆ Deal with hostile customers.
- ◆ Refuse to sell alcohol when in doubt.
- ◆ Learn safety procedures when working alone.
- ◆ Have staff read establishment's alcohol policy.
- ◆ Ask the manager for help with difficult situations.
- ◆ Attend alcohol training programs and customer-service training.



Make your establishment a low-risk environment:

- ◆ Ensure sufficient light for ID checks.
- ◆ Install security systems.
- ◆ Restrict loitering.
- ◆ Display alcohol away from doorways and entrances.
- ◆ Restrict entry to those under 21.
- ◆ Observe customers' actions.
- ◆ Inform customers of the establishment's policy and the law.
- ◆ Use Identification Scanners.
- ◆ Display the Department of Revenue age placard in a prominent place.

Recognizing False Identifications

Ways people obtain false identification:

- ◆ Borrowing an ID from older sibling or a friend.
- ◆ Computer generated identification on computers and laser printers.
- ◆ Altering information on existing identification such as birth date, photo and signature.
- ◆ Obtain through the internet.

Look for these items on acceptable forms of identification cards:

- ◆ Government issued ID:
 - ⇒ Driver's License
 - ⇒ State Issued ID Card
 - ⇒ Military ID
 - ⇒ Passport
- ◆ Expiration Date (if it's expired, it's **not** valid).
- ◆ Birth Date – Ask for the date. Compare that date with the license.
- ◆ Photo — Compare the photo on the license and the person it identifies. They should be the same person.
- ◆ Height, Weight, Hair Color – License should describe the person presenting it in terms of height, weight, color of eyes and hair.
- ◆ Thickness of License – Watch for raised surface, which may indicate an inserted photo.

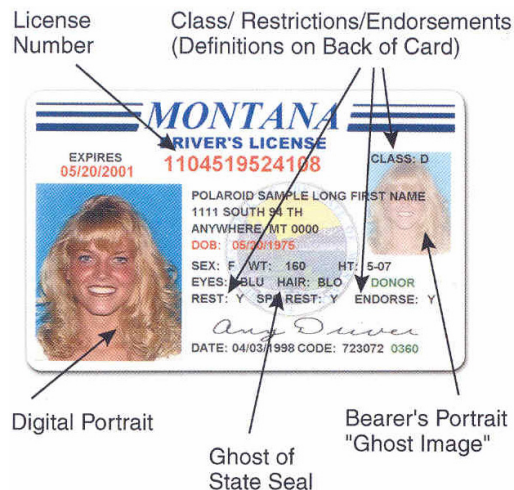
Under 18 Years of Age		
1 ST OFFENSE	2 ND OFFENSE	3 RD OR SUBSEQUENT OFFENSE
Fined not less than \$100 and not to exceed \$300 Perform 20 hours of community service Person and parent/guardian complete and pay all costs of participation in community-based substance abuse information course approved by DPHHS, or court, or provided by Department of Corrections, or a licensed hospital that provides chemical dependency services.	Fined not less than \$200 and not to exceed \$600 Perform 40 hours of community service Person and parent/guardian complete and pay all costs of participation in community-based substance abuse information course approved by DPHHS, or court, or provided by Department of Corrections, or a licensed hospital that provides chemical dependency services.	Fined not less than \$300 or more than \$900 Perform 60 hours of community service Person and parent/guardian complete and pay all costs of participation in community-based substance abuse information course approved by DPHHS, or court, or provided by Department of Corrections, or a licensed hospital that provides chemical dependency services.
Driver's license confiscated by court for 30 days.	Complete chemical dependency assessment. If recommended, attend treatment program.	Driver's license confiscated by court for 6 months. Complete chemical dependency assessment. If recommended, attend treatment program.

If convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order license suspended for 3 months for 1st offense, 9 months for 2nd offense, and 12 months for 3rd or subsequent offense.

- ◆ Separations in Lamination.
- ◆ Surface of Identification – Watch for raised photo, knife cuts, or any rough areas that may have been altered.
- ◆ Blurred Lettering – Watch for type that does not match or looks like it has been altered.
- ◆ Check Signatures – Have person write out their signature and compare it to the identification they gave you.
- ◆ Ask for a second ID if there is any doubt.

Adult Driver's License or ID Card:

- ◆ **Adult license shows photo of person on left side** with ghost image on top right of card front.



We can help prevent problems by explaining to underage people what the laws are and what affect underage drinking can have on a person.

When minors attempt to purchase or possess alcohol, they need to understand that they are committing an unlawful act and are subject to Montana laws.

The current 45-5-624 MCA • Unlawful Attempt to Purchase or Possession of an Intoxicated Substance has been revised for those between ages 18 and 20 years old.

Starting October 1, 2005, differences for 18 years of age, but under 21 years of age, may include:

- ◆ increase of fines for each offense
- ◆ must perform community service with the numbers of hours increased
- ◆ shall complete and pay all costs of participation in a community-based substance abuse information course approved by DPHHS, or court, or provided by the Department of Corrections, or a licensed hospital that provides chemical dependency services
- ◆ second and third offenses must complete a chemical dependency assessment, and treatment, if recommended.

The penalties of possession of intoxicating substance for underage youth are shown on the following pages.

There is a single definition for all persons under age 21 for unlawful possession of intoxicating substance; however, age-distinct penalty structure exists. Amendments to 45-5-624 MCA effective October 1, 2005.

Alcohol is perhaps the number one drug problem among underage persons in the state of Montana.

“Underage drinking is a problem in Montana”

- ♦ Montana high school students rank highest in the nation for alcohol use.
- ♦ In a recent survey, 34.4% of Montana high school students reported binge drinking (having 5 or more drinks of alcohol in a row on one occasion) during the 30 days preceding the survey.
- ♦ By 12th grade, 88% of the students have used alcohol in their lifetime.
- ♦ 22% of students in the 2002 Montana Prevention Needs Assessment surveyed reported being drunk at school at least once in the previous 12 months preceding the survey.
- ♦ In 2004, there were 499 underage drivers involved in alcohol/drug related crashes and of those 499 drivers, 17 were involved in fatal alcohol/drug crashes.

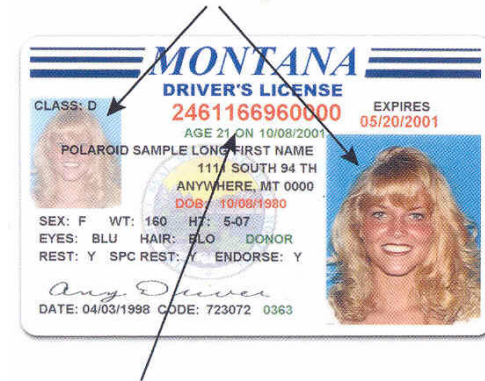
Above statistics derived from:

- ♦ 2004 Montana Prevention Needs Assessment Survey;
- ♦ Highway Traffic Safety Office Problem-Identification Document; and
- ♦ Office of Public Instruction-Youth Risk-Behavior Survey.

Under 21 Driver's License or ID Card:

- ♦ **Juvenile license shows photo of person on right side with ghost image of top left of card front.**

"Under 21" Documents Have Portrait and Ghost Image Reversed

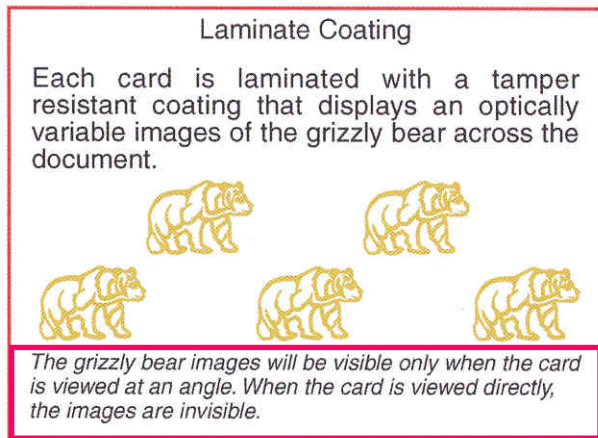


"Under 21" Printed in Green

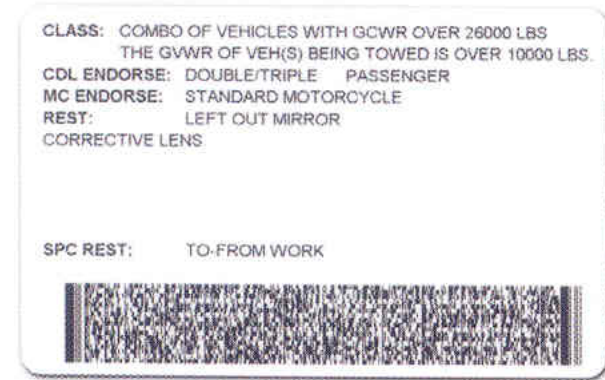
- ♦ Juvenile license shows date when the person will turn 21 years of age in green text on center of card front.
- ♦ Digital portrait and signature images and demographic information of the cardholder is printed onto the highly durable composite card.
- ♦ Age 21 - Montana's license or Montana identification card has the date the cardholder will turn 21 in the center of the card front. The text will be printed in green.

Adult and Under-21 Driver's Licenses have:

- ◆ Ghost image (a smaller, lighter duplicate portrait) of the cardholder's portrait image appears on the card front for additional card security.
- ◆ Ghost image of the state seal appears in the center of the card front for additional card security.
- ◆ Ultraviolet (UV) printing of the word Montana diagonally will be on the adhesive side of the overlaminate.
- ◆ Secure Laminate with a tamper-resistant coating that displays optically-variable images of the grizzly bear across the document. Even a surgeon's scalpel leaves a visible line on the face of the license indicating attempts of tampering.



- ◆ The 2-D barcode located on the back of each card contains all of the information from the front of the card for added security.



Working with Law Enforcement

Things you can do to help law enforcement reduce the problem of underage drinkers:

- ◆ Report all cases of underage persons attempting to purchase alcohol, whether it's with false identification or other means.
- ◆ Seize all false identification cards and turn them over to law enforcement.
- ◆ Report any legal aged person or persons you suspect of buying alcohol for an underage person or persons.
- ◆ Keep an incident log (date, time, anything about the incident that happened).